

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Braden	Team: Team # 2	CCRB Case #: 200307393	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/21/2003 12:10 AM	Location of Incident: § 87(2)(b) in the Bronx	Precinct: 41	18 Mo. SOL 3/21/2005	EO SOL 3/21/2005	
Date/Time CV Reported Mon, 09/22/2003 12:45 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 09/22/2003 12:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DI James Essig	00000	879610	041 PCT
2. POM Glenn Casey	03170	917395	041 PCT
3. POM Richard Mardarello	13115	924129	041 PCT
4. LT Patrick Cortright	00000	910420	041 PCT
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Juan Fernandez	29089	922335	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A. DI James Essig	Abuse: DI James Essig authorized the seizure of § 87(2)(b) § 87(2)(b)'s vehicle.	§ 87(2)(b)
B. LT Patrick Cortright	Abuse: Lt. Patrick Cortright searched the car in which § 87(2)(b) § 87(2)(b) was an occupant.	§ 87(2)(b)
C. POM Glenn Casey	Force: PO Glenn Casey used physical force against § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
D. POM Richard Mardarello	Force: PO Richard Mardarello used physical force against § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
E. An officer	Force: An officer used physical force against § 87(2)(b) § 87(2)(b).	§ 87(2)(b)

## Synopsis

§ 87(2)(b) and her boyfriend, § 87(2)(b) alleged that on September 21, 2003, § 87(2)(b) had double-parked § 87(2)(b)'s car in front of her residence at § 87(2)(b) in the Bronx. Several police officers began to arrive on the scene, stating that they were going to tow the vehicle (Allegation A). § 87(2)(b) and § 87(2)(b) stated that Lt. Cortright entered the vehicle and searched through the console area (Allegation B). § 87(2)(b) and § 87(2)(b) verbally protested this search and that the officers intended to tow the car. Both of them alleged that due to their protests, PO Casey and PO Mardarello pushed § 87(2)(b) and PO Casey and another, unidentified officer, pushed § 87(2)(b) (Allegations C, D and E). Finally, § 87(2)(b)'s vehicle was ultimately towed and released back into her custody later that day, along with a summons § 87(2)(b). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

This case was re-assigned to the undersigned investigator on September 8, 2004.

## Summary of Complaint

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b)'s brother, § 87(2)(b) walked into the CCRB on September 22, 2003 to file this complaint (encs. 10-12). § 87(2)(b) only went to the precinct to check on the car, and was not involved in, nor did he witness, any interactions with the police. § 87(2)(b) was also not present for the some of the initial interaction with the officers, and provided testimony about it only based on what § 87(2)(b) told her later. § 87(2)(b) said that at around 12:45AM, he was sitting in § 87(2)(b)'s SUV in front of her residence on § 87(2)(b) in the Bronx, near § 87(2)(b) and § 87(2)(b). § 87(2)(b) was talking with his friend, § 87(2)(b) who lives around the corner, when three officers (identified through the investigation as DI Essig, Lt. Cortright and PO Fernandez) approached him in an unmarked police vehicle. DI Essig asked him to step out of the vehicle. § 87(2)(b) said that Lt. Cortright then entered the vehicle and was "searching through some items [he] had in the [open] compartment in the middle of the vehicle." § 87(2)(b) stated that the officer "was moving things around." Lt. Cortright then took the keys out of the vehicle, separated § 87(2)(b)'s house keys from his car key, and handed § 87(2)(b) his house keys, his cellular phone and his Nextel. Lt. Cortright told § 87(2)(b) that his vehicle was going to be towed § 87(2)(b). § 87(2)(b) said he was upset with this, but did not raise his voice.

§ 87(2)(b) said at this point, he called § 87(2)(b) who came downstairs. Both § 87(2)(b) and § 87(2)(b) agree that by then, the initial officers who had been in the unmarked car had left the scene. However, by then, two additional officers (identified from the investigation as PO Casey and PO Mardarello) had arrived. § 87(2)(b) approached PO Casey with her driver's license and asked if she could "retain the vehicle." He told her she could not, because the vehicle was going to be towed. She asked, "can you dispatch a supervisor on the scene?" They told her they could not, because the supervisor had already called for a tow truck. § 87(2)(b) then called 911 to have a supervisor dispatched. DI Essig then came back to the location and explained to § 87(2)(b) that the car was being towed because it had been double-parked, and that it didn't matter if a person was inside of it or not. DI Essig then instructed PO Casey and PO Mardarello to remove § 87(2)(b) and § 87(2)(b) from the vicinity of the vehicle. At that point, § 87(2)(b) states that she was pushed by both PO Casey and PO Mardarello. § 87(2)(b) said PO Casey and another, unidentified black officer then pushed him away from the vehicle. § 87(2)(b) admitted that she was probably getting a little excited at this point, and was likely talking very fast and loudly, although she stated that at no time did she physically try to stop the officers from taking the vehicle.

§ 87(2)(b) and § 87(2)(b) said that at this point, a tow truck had arrived on the scene. However, either DI Essig, Lt. Cortright, or PO Fernandez retrieved the keys from either PO Casey or PO Mardarello, and Lt. Cortright drove off in § 87(2)(b)'s vehicle. § 87(2)(b) asked where her vehicle was being taken. She was ignored at first, but she reminded the officers that 911 was still recording them. PO Casey told her that the car would be taken to the impound lot on 140th and Bruckner Blvd. § 87(2)(b), § 87(2)(b), § 87(2)(b) § 87(2)(b), and § 87(2)(b) § 87(2)(b) then went to the impound lot, but were told that their car was not there. At

the 41<sup>st</sup> Precinct, they observed § 87(2)(b)'s vehicle in the precinct's parking lot. After some arguing with various officers at the precinct, § 87(2)(b) was given some paperwork stating that the officers had towed her car. § 87(2)(b) picked up her car at 8:30AM the following morning, September 22.

### **Results of Investigation**

DI Essig, Lt. Cortright, PO Fernandez, PO Casey, and PO Mardarello

DI Essig was interviewed at the CCRB on November 18, 2003 (enc. 13), PO Casey on January 5, 2004 (enc. 14), PO Fernandez on January 16, 2004 (enc. 16), PO Mardarello on March 19, 2004 (enc. 18), and Lt. Cortright on April 27, 2004 (enc. 20). On September 21, 2003, DI Essig, Lt. Cortright, and PO Fernandez were working together in plainclothes, in an unmarked black Chevy Impala, assigned to a special detail that PO Fernandez called the "drag racing initiative." DI Essig is the Commanding Officer of the 41<sup>st</sup> Precinct. PO Casey and PO Mardarello were attired in uniform, using an unmarked car, also assigned to a drag racing detail.

All of the officers explained that according to the aggressive tow policy, and a weekend "zero tolerance" attitude towards this policy, they tow all illegally parked vehicles in their sector on Friday and Saturday nights. According to DI Essig, the aggressive tow policy stipulates that the police have the authority to tow "any car that's illegally parked in the vicinity." On Friday and Saturday nights, they usually have problems with drag racing, drugs, loud music and loud parties in the Hunts Point area, which is why the initiative came into effect. DI Essig, Lt. Cortright, and PO Fernandez said that when they arrived at the corner of § 87(2)(b) and § 87(2)(b) they observed § 87(2)(b)'s car double-parked. DI Essig could not recall if § 87(2)(b) was standing outside of the car or if he was inside when they arrived, but Lt. Cortright and PO Fernandez both testified that § 87(2)(b) was outside of the car. DI Essig stated that would not have made a difference, as the policy would be to tow the car regardless of whether it was occupied or not.

Lt. Cortright said that § 87(2)(b) approached the car, but the Lt. told him he was too late, that it was going to be towed. § 87(2)(b) asked if he could have his cell phones, and Lt. Cortright gave them to him. None of the officers stated that they searched the car or console. However, when asked whether it would be standard to search a vehicle that was about to be towed, DI Essig stated that if an officer gets into the vehicle to drive it, as an officer did in this case, he can look at whatever is in his plain view as a safety issue. Had any of the officers searched the area around the driver's seat, it would have been a safety search.

These three officers said that they radioed for a patrol car to come to the location to watch § 87(2)(b)'s vehicle until the tow truck arrived. PO Casey and PO Mardarello responded to the location before the initial three officers left. PO Casey said Lt. Cortright "did not want the vehicle to be removed without any security on the area" and to ensure that when the tow truck operator arrived he would be able to remove the vehicle without any problems. Lt. Cortright gave PO Casey the keys to the car. At that point, DI Essig, Lt. Cortright, and PO Fernandez left the scene. § 87(2)(b) then approached PO Casey and asked who was stealing her truck and what was going on. PO Casey got out of his vehicle to speak with her, and saw § 87(2)(b) take down PO Casey's name and shield number. She asked to speak to the person who authorized the seizure, and was stating that she would not have her car taken; PO Casey said that the woman was "yelling and screaming," and he described her as "angry and irate." PO Casey said that neither § 87(2)(b) nor § 87(2)(b) were physically confrontational during the interaction, and § 87(2)(b) was never verbally abusive. PO Mardarello described § 87(2)(b) as "mad and angry," while § 87(2)(b) was "calm and relaxed." PO Casey then radioed Lt. Cortright, asking him to come back to the scene; PO Mardarello, however, did not recall if Lt. Cortright, DI Essig, or PO Fernandez returned to the scene at any point after they first left.

DI Essig, Lt. Cortright, and PO Fernandez did respond back to the scene. DI Essig asked § 87(2)(b) to stand on the sidewalk so that the tow truck could hook her car up. DI Essig said that § 87(2)(b) was "agitated," standing in front of the car, and was on the phone while he spoke with her. DI Essig explained that the car was double-parked and was going to be towed. He informed her that if she did not move, she would be arrested for Obstructing Governmental Administration, at which point she moved. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) PO Mardarello stated that while he was not instructed to remove

§ 87(2)(b) or § 87(2)(b) from the vicinity of the vehicle, at one point there was an issue of § 87(2)(b) blocking the vehicle from being towed; she was standing in front of the vehicle with § 87(2)(b) PO Mardarello asked her to move away, which she did. All of the officers denied that any of them ever touched § 87(2)(b) or § 87(2)(b) at all, and all denied that any force was used at all. PO Casey said, “there was no reason to touch them, no reason to put my hands on them.”

DI Essig said by then, a crowd had gathered, so Lt. Cortright drove the car to the precinct and from there it was towed to the pound. Lt. Cortright agreed that § 87(2)(b) was loudly speaking to other people on the block, and he was worried about things being thrown off the roof. According to DI Essig, it is standard for an officer to drive the car away rather than to wait for the tow truck to respond when officers feel that “there might be some harm to [an] officer or a crowd gathering,” as in the situation in question. He also explained that when a car is aggressively towed, the owner of the vehicle is charged a \$187 tow fee, issued a summons at the tow pound (written by the officers at the scene, that goes with the car), and they can retrieve the car the next morning. The only information that the officers provide the vehicle owner with at the time of the tow is the location of the tow pound that they need to go to the next morning.

### Police Documents

The recordings of § 87(2)(b)'s call to 911, and corresponding Sprint transcript (enc. 22, 23) document a substantial portion of her and § 87(2)(b) interaction with the officers (the call lasts just under 10 minutes). § 87(2)(b) begins the call, at 12:48AM, by telling the 911 operator that PO Casey was refusing to call a supervisor to the scene, and that they were towing her car “illegally.” § 87(2)(b) stated that the officers asked “him” to get out the vehicle, “illegally” took the keys out of the car, and “illegally searched the vehicle.” § 87(2)(b) proceeds to speak to PO Fernandez, who argues with her that § 87(2)(b) had been out of the vehicle when the officers arrived. She then begins to speak to DI Essig, who, after explaining that the car was being towed for being double-parked, says, “let’s go.” § 87(2)(b) protests, and another officer says, “Let’s go. It’s not worth it.” § 87(2)(b) then raises her voice and says, “Why are you pushing on me?” While she says that, an officer (it is unclear which one) is saying “move” at least twice. After § 87(2)(b) asks why he’s “pushing on” her, this officer says, “I’m not.”

§ 87(2)(b) begins to speak to the 911 operator again. She does not report anything about an officer pushing her or § 87(2)(b). Rather, § 87(2)(b) explains that the officers are now taking her car; she then begins to yell at the officers, asking where they were taking her car. § 87(2)(b) then tells the 911 operator that the officers just drove off in the car and didn’t use a tow truck. The remaining, unidentified officers on the scene explain calmly to § 87(2)(b) where the car was going, and that they needed to keep the summons with the car. § 87(2)(b)'s voice was raised and her attitude argumentative during the interaction.

None of the officers had any entries in their memobooks about this incident. The summons (enc. 21) for § 87(2)(b) was completed by PO Fernandez.

## **Conclusions and Recommendations**

### Officer Identification

§ 87(2)(b) and § 87(2)(b) obtained the names of several officers at the time of the incident, including those of DI Essig, PO Casey, PO Mardarello, and PO Fernandez. As such, they were also able to describe, in their initial statements to the CCRB, which officers did and said what during their interaction. Any officers whose names the civilians did not obtain were identified through officer testimony.

### Undisputed Facts

§ 87(2)(b) double-parked § 87(2)(b)'s car outside of her building. DI Essig, Lt. Cortright, and PO Fernandez decided to summons and tow the car according to the Aggressive Tow program. Lt. Cortright gave § 87(2)(b) his cell phones. § 87(2)(b) came downstairs and began questioning the officers about what they were doing. § 87(2)(b) called 911 to request assistance. The officers ultimately drove the car to the precinct, to have the vehicle towed from there. § 87(2)(b) recovered her car the following day.

### Credibility

§ 87(2)(b), § 87(2)(g) They walked into the CCRB to file the complaint later the same day on which they got their car back, and were prepared with paperwork and the names of many of the officers they were complaining about. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Abuse of Authority: DI James Essig authorized the seizure of § 87(2)(b) s vehicle.

§ 87(2)(g) All of the officers testified that § 87(2)(b) s car was towed pursuant to the NYPD's Aggressive Tow program. Specifically, the officers explained that they use this policy to crack down on a drag-racing problem they encounter in Hunt's Point by towing any and all illegally parked cars on weekend nights. The Aggressive Tow program is not documented in the Patrol Guide or the NYPD's Police Academy Training Guide, presumably because every command uses it for different purposes. The investigator was able to obtain a copy of a UF-49 describing the policy (enc. 1), although it was written in 1993. The UF-49 does state that each precinct should delineate the specific "vehicular conditions" encountered in each precinct for which the policy should be used. Further, it states that officers should issue a summons "for the parking/moving violation under which towing is legally permitted (i.e. . . . double parked)" before initiating the aggressive tow. § 87(2)(g) New York State Vehicle and Traffic Law (enc. 1), which states that officers can authorize "the removal of such vehicle . . . to a garage, automobile pound or other place of safety," if the vehicle is "an obstruction to traffic, or any place where stopping, standing, or parking is prohibited."

§ 87(2)(b), § 87(2)(g)

Allegation B: Abuse of Authority: Lt. Patrick Cortright searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) and § 87(2)(b) stated that Lt. Cortright, upon arriving at the scene, looked through the car's console, "moving things around." None of the officers recalled this or any type of search, although Lt. Cortright recalled that § 87(2)(b) asked if he could have his cell phones, which had been in the console area, and Lt. Cortright gave them to him. § 87(2)(g)

DI Essig explained that if an officer gets into the vehicle to drive it, the officer can conduct a plain view search for safety reasons. § 87(2)(g)

§ 87(2)(g) Kamin's *Search and Seizure* states that an inventory search may be conducted on any vehicle that is "lawfully impounded." One of the reasons for which a car can be lawfully impounded, according to Kamin's, is if it is "abandoned or illegally parked and presents a danger or impediment to traffic," a category into which § 87(2)(b)'s vehicle falls. However, an inventory search and impounding of a vehicle is related to the arrest of the driver—if the driver is arrested and the car can be impounded, only then can an inventory search be conducted. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation C: Force: PO Glenn Casey used physical force against § 87(2)(b) and § 87(2)(b)  
Allegation D: Force: PO Richard Mardarello used physical force against § 87(2)(b)  
Allegation E: Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that PO Casey and PO Mardarello pushed her, while § 87(2)(b) said that PO Casey and another, unidentified black officer pushed him. Both § 87(2)(b) and § 87(2)(b) said that other police units were on the scene at various points—the unknown black officer who pushed § 87(2)(b) was one of these officers. However, all of the officers interviewed testified that no other officers were on the scene. The Sprint confirms that only two units were on the scene. § 87(2)(g)

§ 87(2)(g)

All of the officers testified that no force was used against either civilian, and nor did any of the officers feel that force was needed at any time. Some of the officers recalled that at one point, § 87(2)(b) was standing in front of the car, blocking it from being towed away. DI Essig told her to move, and when she didn't, he said he informed her that she could be arrested for Obstructing Governmental Administration. However, the officers stated that after being told of the possibility of arrest, § 87(2)(b) moved on her own, and no force was required to move her. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

It is possible to hear the officers say "let's go," then tell § 87(2)(b) to "move," at least twice. While the officer tells her to move, § 87(2)(b) says, "why are you pushing on me?" An officer then says, "I'm not!" § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: